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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No. 115

THE UNITED STATES OF AMERICA,
Petitioner

V.

ONE FORD COUPE AUTOMOBILE, No. 4776501, Alabama License No. 10978, Garth Motor Company, Claimant.

ON WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE FIFTH CIRCUIT

Re-Argument on Direction of the Court

Argued in October Term, 1925, as Cases Nos. 473 and 611

SUPPLEMENTAL BRIEF OF WILLIAM S. PRITCHARD, AND JOHN D. HIGGINS, ATTORNEYS FOR GARTH MOTOR COMPANY, CLAIMANT

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STATEMENT

Having filed the original motion to quash the libel in the Garth Motor Company case and argued the same in the District Court of the United States for the Northern District of Alabama, wherein the motion to quash

the libel was sustained; and having argued the cause in the Circuit Court of Appeals for the Fifth Circuit on appeal, in which court the decree of the District Court was affirmed and to review which decree the instant certiorari was filed; and feeling that the vital issue to a correct determination of this cause has not been clearly set forth in the briefs heretofore filed herein, we take the liberty of filing this short supplemental brief on behalf of the Garth Motor Company, Claimant, which, in our opinion, is decisive of the matter at issue.

The statement of the case heretofore set forth in original brief of counsel is hereby adopted. The matter involved is purely one of law, and in our humble opinion is to be determined on the two following propositions:

PROPOSITION "X"

There was no tax upon illicitly distilled spirits during the month of August, 1923, wherefore, the automobile in question could not have been used for the purpose of depositing and concealing therein illicit distilled spirits, with the intent then and there to defraud the United States of the taxes thereon.

ARGUMENT

The fact that there is no longer a tax upon the liquor involved in this case was definitely decided by this Court on December 11, 1922, in the matter of Regal Drug Corporation vs. Wardell, 260 U. S. 392. Mr. Justice McKenna, delivering the opinion of the court, stated:

"We took pains to say that 'evidence of crime (section 29, Tit. 2) is essential to assessment under section 35', and that we could not 'concede in the absence of language admitting of no other construction, that Congress intended that penalties for crime should be enforced through the secret findings and summary action of executive officers. The guarantee of due process of law and trial by jury are not to be forgotten or disregarded, See Fontenot vs. Accardo, (C. C. A.), 278 Fed. 871. A preliminary injunction should have been granted.'

The comment and decision are applicable here and decisive. *The government concedes that the case is conclusive against the 'penalties and double taxes;' but contends that under tax laws which antedated the National Prohibition Act, only inconsistent laws are repealed, and that taxes in this case were levied under a law not inconsistent. For this Section 35 is adduced. Lipke vs. Lederer (259 U. S. 557; 66 L. Ed. 1061 42 Supreme Court Rep. 549) manifestly precludes the contention.*" (Italics Supplied.)

If prior revenue laws fixing a tax upon liquor were inconsistent with the National Prohibition Act upon December 11, 1922, when the foregoing decision was rendered, they were inconsistent with said Act on November 23, 1921, when the supplemental act, the "Willis-Campbell Act" (42 Stat. 222) was passed. The supplemental act, by its expressed terms merely re-enacted such laws in regard to the manufacture and taxation of and traffic in intoxicating liquor and all penalties for the violation of said laws as were not inconsistent with the National Prohibition Act.

The Government, to say the least of the matter, has been consistent in its contentions; in the instant case its contentions are identical with those which it set up in the Regal Drug Co., case wherefore the decision of this Court in the Regal Drug Co., and the Lipke vs. Lederer cases are the law of this case, upon the question of a tax upon the instant liquor after the adoption of the National Prohibition Act, and are conclusive of the matter at issue. Inasmuch as the Court held that the so-called taxes as set up in the said Prohibition Act, were in truth and in fact a penalty and not a tax, it really leaves nothing further for the Court to consider in the instant case. It might be added that the learned District Judge, Hon. William I. Grubb, before whom this case was originally heard, and who sustained the claimant's contentions herein, allowed the United States Attorney a month in which to show a valid tax, upon the instant liquor, at the time of the seizure of the automobile in question and that the United States Attorney failed to cite a tax that had not by this court been determined to be a penalty, hence he sustained the motion to quash the libel.

PROPOSITION "Y"

Since the enactment of the National Prohibition Act a suit cannot be maintained under Revised Statutes, 3450 (Compiled Statutes 6352) for forfeiture of a vehicle as having been used to remove and conceal distilled spirits, for beverage purposes whereon a double tax (penalty) has been imposed under said Prohibition Act wtih intent to defraud the United States of such tax.

Eighteenth Amendment to the Constitution of the United States.

Lipke vs. Lederer, 259 United States 557.

Regal Drug Corporation v. Wardell, Collector of Internal Revenue, 260 United States 386.

Yuginovich vs. United States, 256 United States 450.

United States vs. Stafoff, et als, 260 United States 477

Gray vs. United States, 276 Fed. 395.

Commercial Credit Company vs. United States (6th C. C. A. 4-6-1925) 5th Fed. Rep. (2nd) Page 1.

United States v. One Haynes Automobile (5th CCA, 7-25-1921), 274 Fed. Rep. 926.

Fontenot, Collector of Internal Revenue, vs. Acardo (5th CCA 2-15-1922) 278 Fed. Rep. 871.

Lewis vs. United States (6th CCA, 4-14-1922), 280 Fed. Rep. 5.

McDowell vs. United States (9th CCA, 2-5-1923) 286 Fed. Rep. 521.

One Ford Touring Car vs. United States, (8th CCA, 10-21-1922), 284 Fed. Rep. 826.

1 Big Six Studebaker Automobile vs. U. S. (9th CCA, May 28, 1923), 289 Fed. 256.

ARGUMENT

The so-called taxes or penalties set forth in section 35 of the National Prohibition Act, are merely additional penalties for the violation of a criminal statute. The Revenue Act, so far as it applies to distilled spirits for beverage purposes, has been repealed by the National Prohibition Act. Liquors can no longer be withdrawn from bond for beverage purposes. If they are withdrawn for such purposes, a crime is committed then and there. The Government here again, just as it did in

the Regal Drug case, seeks to work around the National Prohibition Act to find a tax. It is difficult to see how there could have been any tax on liquor when the National Prohibition Act was adopted, not inconsistent with that Act, that were not by its plain language as heretofore construed by this Court, converted into penalties, and as such continued in force and effect. Inconsistent laws were repealed by said Act. *Inconsistent laws were not re-anacted by the Supplemental Act.*

Respectfully submitted,

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Attorneys for Garth Motor Company,
Claimant.

I hereby certify that I have on this the 13th day of October, 1926, mailed a copy of the foregoing brief, by registered mail, postage prepaid, to Honorable John Sargeant, Attorney General of the United States, Department of Justice Building, Washington, D. C.

William S. Pritchard

Of Counsel for Garth Motor Company,
Claimant.